



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2025

Appeal Ref: APP/B5480/X/24/3353025

165a High Street, Hornchurch RM11 3XS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Tony Rounce against the decision of the Council of the London Borough of Havering.
 - The application ref E0003.24, dated 18 January 2024, was refused by notice dated 4 April 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which an LDC is sought is 2 no. self-contained flats nos.165A & 165B.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.

Reasons

3. 165 High Street is a two-storey plus attic mid-terraced property. The ground floor of the property, no. 165, is in commercial use and the remainder, no. 165a, is subdivided into three flats. The Appellant maintains that 165aC was 'existing' and he is seeking to establish the lawfulness of 165aA and 165aB. In effect, however, he is seeking to establish the lawfulness of all three flats. To be immune from enforcement action and therefore lawful the three flats must have been occupied continuously for a period of four years. The four year period can have been at any time but if it was before the four year period immediately before the date of the application then the use as three flats must then have continued up to that date.
4. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probabilities, that the three flats have been occupied continuously for a four year period.
5. Evidence indicates that the Appellant purchased 165a High Street in October 2011 and he claims that use of the property as three flats commenced in November 2011. He also claims that he has paid Council Tax for the three flats for in excess of ten years but evidence provided by the Council indicates that separate Council Tax payments only commenced in 2022 or 2023. Energy performance certificates do not show occupancy and are not relevant.
6. The Appellant has submitted thirteen tenancy agreements; three for Flat A, five for Flat B and five for Flat C. One year tenancies for Flat A commenced on 21 November

2011, 23 August 2021 and 13 May 2022. A one year tenancy for Flat B commenced on 3 February 2023 and six month tenancies commenced on 21 June 2014, 10 September 2015, 18 October 2015 and 19 May 2016. One year tenancies of Flat C commenced on 18 November 2013, 7 September 2016 and 14 October 2020, and six month tenancies commenced on 10 September 2015 and 7 July 2017.

7. The tenancy agreement evidence indicates that occupancy of the three flats has been sporadic. There is a one year tenancy agreement for Flat A commencing in 2011 but no others until 2021 and none thereafter. There are four six month tenancies for Flat B in the period 2014-2016 but no others until a one year tenancy commencing in 2023 and none thereafter. There are four tenancies for Flat C in the period 2013-2017 but no others until 2020 and none thereafter. The three flats, on the evidence submitted, have not been occupied continuously for any four year period.

8. The Appellant has not provided sufficient precise and unambiguous evidence to justify a conclusion, even on the balance of probabilities, that 165aA and 165aB, and 165aC, have been occupied continuously for a four year period.

9. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for 2 no. self-contained flats nos.165A & 165B at 165a High Street, Hornchurch was well-founded and the appeal fails. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector